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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,925	01/17/2006	Gerard McGuigan	GFRED 3.3009	2326
530	7590	07/03/2008	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			HAWK, NOAH CHANDLER	
			ART UNIT	PAPER NUMBER
			3636	
			MAIL DATE	
			07/03/2008	DELIVERY MODE
				PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/564,925	MCGUIGAN, GERARD	
	<b>Examiner</b>	<b>Art Unit</b>	
	NOAH C. HAWK	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 2/25/08.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 recites the limitation "the means for adjusting" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henry in US Patent 2164242 in view of Disher in US Patent 6015077.
  - a. Regarding Claims 1-3, Henry teaches an umbrella carrier comprising attachment means (14 and 16), a holster like perforated support (M) connected to the attachment means and having openings (11) in sidewalls thereof, the support in the form of a substantially cylindrical tube (Best seen in Figure 3).

Henry fails to teach a lining. Disher teaches an umbrella support having a lining (12) of water repellent porous fabric (See Column 4, lines 4-19: the fact that the fabric allows the water to pass through it is considered sufficient to be deemed porous) in the form of a sleeve. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device on Henry by adding a fabric sleeve as taught by Disher to the interior of the device in order to "draw or wick moisture away from the umbrella" (as taught by Disher in Column 4, lines 18-19).

- b. Regarding Claim 4, Henry, as modified, is silent on the material used to construct the perforated support. It would have been an obvious matter of design choice to one of ordinary skill in the art at the time of invention to use a synthetic plastic material to form the support in order to provide an easily manufactured item.
- c. Regarding Claim 5, Henry, as modified, is silent on the material used to construct the perforated support. It would have been an obvious matter of design choice to one of ordinary skill in the art at the time of invention to use a metal to form the support in order to provide a strong and resilient item.
- d. Regarding Claim 6, Henry, as modified, further teaches that the attachment means is adapted (see Column 2, lines 43-47) to engage a carrying handle or strap on an article of luggage with which it is to be used.
- e. Regarding Claim 7, Henry, as modified, teaches that the attachment means includes attachable clips (16).

f. Regarding Claim 8, Henry, as modified, teaches that the attachment means includes at least one hook (16). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the attachment means of Henry, as modified, by using two hooks in order to allow both ends of the device to be clipped on to the piece of luggage as it has been held that a mere duplication of parts involves only routine skill in the art.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henry, as modified, as applied to claim 1 above, and further in view of Sipperly in US Patent 5584403. Henry, as modified, fails to teach an open mesh or lattice support element. Sipperly teaches an umbrella support having an open mesh (52). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Henry, as modified, by using an open mesh support element as taught by Sipperly in order to better drain the water from the umbrella.

6. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henry, as modified, as applied to claim 1 above, and further in view of McConnell in US Publication 2004/0020524. Henry teaches a perforated support element, but fails to teach that it is flexible. McConnell teaches a flexible support element (34) with a cross section that is restrictive in relation to the cross-section of the item with which it is to be used so that the support element resiliently deforms slightly when the item is inserted and acts to retain it in place (see paragraph 0035). McConnell further teaches a slightly oval (see Figure 8) cross-section of the support element. McConnell also teaches that the support element is split along its length (64) to provide an opening and includes

means for adjusting the cross sectional diameter of the support element to accommodate items of different sizes (see paragraph 036), wherein the means for adjusting the cross-sectional diameter of the support element is provided by the inherent resilience of the material from which it is made. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the support element of Henry, as modified, by using a resilient, slightly oval support element as taught by McConnell in order to allow the user to accommodate different size umbrellas into the support element.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henry, as modified, as applied to claim 13 above, and further in view of Ford in US Patent 2319729. Henry, as modified, fails to teach retaining means. Ford teaches a support element (25) with a retaining means (27/28) for holding the support element in an adjusted position. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Henry, as modified, by adding retaining means in order to provide a more secure means for supporting the umbrella in the holder.

### ***Response to Arguments***

8. Applicant's arguments filed 2/25/08 have been fully considered but they are not persuasive.

9. In response to the applicant's argument that Disher does not teach a water-repellent, porous fabric: please refer to Disher, Column 4, lines 4-19: the fact that the

fabric allows the water to pass through it is considered sufficient to be deemed porous and nylon, as is mentioned, is well-known to be a water-repellent fabric.

10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the use of a lining such as that taught by Disher would aid in keeping mold from propagating on a wet umbrella.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NOAH C. HAWK whose telephone number is (571)272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. C. H./  
Examiner, Art Unit 3636

/David Dunn/  
Supervisory Patent Examiner, Art Unit 3636